IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.9.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.1100 of 2003

M/s.Vijaya agencie rep.
by its Branch Manager
No.183 Thambu Chetty Street
Chennai.600 001. .. Petitioner/Plaintiff

vs.

M/s.Dev Fastners Ltd.
No.42 Dr.Radhakrishnan Salai
Chennai.600 004. .. Respondent/Defendant

Revision Petition filed against the order dated 13.8.2002, passed in M.P.No.189/2002 in Suit No.517/2000 on the file of the IX Judge, Court of Small Causes, Chennai.

For Petitioner : Mr.M.Devendran
For Respondents : No Appearance

ORDER:

This Revision Petition has been filed against the order dated 13.8.2002, passed in M.P.No.189/2002 in Suit No.517/2000 on the file of the IX Judge, Court of Small Causes, Chennai.

2. The plaintiff in Suit No.517/2000 on the file of the IX Small Causes Court, Chennai is the revision petitioner.

3. The suit was filed in the name of the plaintiff, namely, M/s.Vijaya Agencies represented by its Branch Manager for a judgment and decree directing the respondent/defendant herein to pay a sum of Rs.10,853/- together with interest at the rate of 24% per annum.

4. M.P.No.189/2002 was filed by the revision petitioner/plaintiff under Order 1 Rule 10 of the Presidential Small Causes Court Act to permit the revision petitioner/plaintiff to substitute the word "partner" in the place of Branch Manager, in all the places of the plaint and in the verification clause of the plaint as "A.R.Balakrishnan, partner" in the place of "K.Baskaran the Branch Manager."

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5. The reasons given in the affidavit filed in support of M.P.No.189/2002 are that the Power of Attorney was given to Branch Manager one K.Baskaran to sign pleadings and give evidence on behalf of the company. But the Branch Manager under a bonafide mistake filed the suit as representing the company believing that he was authorised to represent the company and this mistake has come to the knowledge only now.

6. This petition was seriously contested by the respondent/defendant on the ground that substitution would change the nature of the suit and the pleadings in the plaint and the application was filed only to fill up the lacuna since P.W.1 was already cross-examined.

7. Accepting the contentions of the respondent/defendant the trial court dismissed the M.P.No.189/2002 by holding that if the petition is allowed it would change the character of the suit. Aggrieved by the order dated 13.8.2002 the above revision petition has been filed by the plaintiff.

8. Heard the learned counsel for the petitioner. Though notice has been sent to the respondent there was no representation either in person or through counsel. I have also gone through the documents filed and the judgment referred to by them.

9. The learned counsel for the petitioner submitted that the amendment sought for in M.P.No.189/2002 would in no way change the character of the suit and he relied on the decision of this court reported in 1999(III) CTC 72 (Agoram Iyer, T.R. v. State of Tamil Nadu) in support of his contentions.

10. The substitution sought for by the plaintiff is that instead of "M/s.Vijaya Agencies rep. by its Branch Manager", the words "M/s.Vijaya Agencies rep. by partner" is to be replaced in all the places in the plaint and in the verification clause, in the place of "K.Baskaran Branch Manager" the words "A.R.Balakrishnan partner" has to be replaced. The fact remains that the Vijaya Agencies continues to be the plaintiff even if the words are substituted as prayed for. In such circumstances, I do not understand how these changes if effected would alter the character of the suit which still remains to be a money suit filed by M/s.Vijaya Agencies.

11. In 1999(III) CTC 72 (cited supra), this court held as follows:

> "13. As I have already stated in the agreement, which had been marked along with the plaint, shows that it is between the Corporation and the partnership firm. In para 3 of the unamended plaint it is stated that the plaintiff is the owner of Sri Ravi Rice Mill, Akkur and doing wholesale and retail trade in paddy and rice and also trading in the name and style of T.R.Agoram Iyer-Sri Ravi Rice Mill, Akkur. Therefore to my mind there is a clear indication in the plaint that the actual claim in the plaint is by the partnership firm and not

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by the individual and the parties to the suit were not in controversy at all on that factual aspect originally when the plaint, as amended, was on the record. By the amendment what all has been done is that the name of the partnership is also brought in the short and long cause title and that it is further amended to show that T.R.Agoram Iyer is the Managing Partner of the said partnership firm. According to me the unamendment allowed by showing the name of the partnership firm along with the original plaintiff on the facts noticed earlier, would not amount to substitution of a new party in the place of the original plaintiff. In support of my view there are at least three decided cases namely, one by the Hon'ble Supreme Court of India and the other two by this court and they are as follows:

(a) Mohideen v. V.O.A.Mohammed, A.I.R.1955 Mad. 294.

(b) Venkata Mallaya v. T.Ramasamy and Co. A.I.R.1964 S.C. 818.

(c) Arokia Annai Rotary & Flour Mills v. S.B.I. 1999(II) CTC 404: A.I.R. 1999 Mad. 264.

The earliest judgment by this court is the judgment reported in Mohideen v. V.O.A.Mohammed, A.I.R 1955 Mad. 294 (D.B). In this judgment it has been held as follows:

"If however imperfectly and incorrectly a party is designated in a plaint the correction of the error is not the addition or substitution of a party but merely clarifies and makes apparent what was previously shrouded in abscurity by reason of the error or mistake. The question in such a case in one of intention of the party and if the court is able to discover the person or person intended to sue or to be sued a mere misdescription of such a party can always be corrected provided the mistake was bona fide, such an amendment does not involve the addition of a party so as to attract section 22(1), Limitation Act."

In the next judgment the Hon'ble Supreme Court of India has held as follows:

"The High Court has observed that even assuming that it would have been more appropriate for the Receiver to show in the cause title that it was the firm which was the real plaintiff and that the firm was suing

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through him it was merely a case of misdescription and that the plaint could be amended at any time for the purpose of showing the correct description of the plaintiff. We agree with the High Court that where there is a case of misdescription of parties it is open to the court to allow an amendment of the plaint at any time and the question of limitation would not arise in such a case."

The facts in the judgment of the Hon'ble Supreme Court of India are as follows:

The plaintiff was one Ramasamy & Company. The defendant was Venkata Mallayya, a partnership firm. In respect of the transactions between the parties the suit came to be filed. The suit was instituted by the Receiver Suryanarayana Garu describing himself in the plaint as follows:

"I. Suryanarayana Garu, Receiver appointed in O.S.No.275 of 1948 on the file of the District Munsif's Court, Guntur. The defendant contended that the suit was untenable because a receiver has no right to institute a suit in his own name and that the receiver had not been expressly authorised by the court to institute the suit in question. Amendment of the plaint was moved with the leave of court by describing the plaintiff as Messrs. T.Ramaswamy & Company represented by "I. Suryanarayana Garu, Receiver appointed in O.S.No.275 of 1948 on the file of the District Munsif's Court, Guntur." in the place of original. The amendment was ordered. Thereupon the defendant filed an amended written statement contended that since the amendment was made long after the period of limitation, it does not cure the initial defect in the suit of having been filed by a person other than the one who was entitled to institute a suit and that consequently the suit was barred by limitation. The trial court on those defects dismissed the suit. The High Court reversed the judgment and at the instance of the defendant, the matter was taken up to the Hon'ble Supreme Court of India. Only in the back drop of these facts, the law as laid down and extracted above had been rendered by the Hon'ble Supreme Court of India."

14. In a judgment of this Court which is reported in Arockia Annai Rotary & Flour Mills v. State Bank of India, 1999(II) CTC 404 : A.I.R. 1999 Mad. 264, this Court following the judgment referred to above in

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Mohideen v. V.O.A.Mohammed, A.I.R. 1955 Mad. 294, has held that the amendment asked for in that decided case would not amount to substituting a new party. In view of the categorical pronouncement of law laid down in the above referred to decided cases, I have no hesitation to hold that the learned trial Judge has completely erred in law and on facts in holding that there is substitution of a new party to the lis; the relief claimed in the plaint is beyond the period of three years after the new party was brought in and therefore the suit is barred by limitation. Consequently I have to hold that the finding rendered by the learned trial Judge that the claim is barred by limitation cannot be sustained and the said finding is reversed."

12. Drawing support from the above decision, I have to necessarily hold that the trial court has certainly erred in law in dismissing the substitution sought for. At the same time as the substitution is sought for after examination of P.W.1, some discomfort and inconvenience will certainly be caused to the respondent/defendant. Therefore I direct the revision petitioner/plaintiff to pay a cost of Rs.1,000/- to the respondent directly within a period of two weeks from the date of receipt of copy of this order. Failing which the C.R.P. shall stand automatically dismissed without further reference to this court.

13. If the cost is paid as directed within the time stipulated, the trial court should permit the revision petitioner/plaintiff to carry out the amendment and dispose of the suit within 4 weeks thereafter.

14. With the above direction the C.R.P. is allowed. No costs. C.M.P.No.7561/2003 is closed.

sks

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1.The Registrar, Court of Small Causes, Chennai.
2.M/S.Dev Fastners Ltd., No.42, Dr.Radhakrishnan Salai, Chennai-600 004.

+ one cc to Mr.M.Devendran, Advocate Sr.No.45809.

NG (CO)
RSM/19.10.2006

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